

# Order

Michigan Supreme Court  
Lansing, Michigan

October 6, 2006

Clifford W. Taylor,  
Chief Justice

130456

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

STATE AUTOMOBILE MUTUAL  
INSURANCE COMPANY,  
Plaintiff-Appellant,

v

SC: 130456  
COA: 254461  
Wayne CC: 03-319297-CZ

GEOFFREY N. FIEGER, FIEGER,  
FIEGER & SCHWARTZ, P.C., and  
FIEGER, FIEGER, SCHWARTZ &  
KENNEY, P.C.,  
Defendants-Appellees.

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On order of the Court, the application for leave to appeal the November 8, 2005 order of the Court of Appeals is considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we REMAND this case to the Wayne Circuit Court to rule on the following issues: (1) whether, and if so on what basis, the defendants were entitled to deduct a portion of the plaintiff's lien recovery for attorney fees and costs incurred in obtaining recovery; and (2) on what basis the plaintiff is entitled to interest, if any. The Wayne Circuit Court's ruling must contain specific findings of fact and conclusions of law and should be submitted to the Clerk of this Court within 42 days of the date of this order.

We retain jurisdiction.

WEAVER, J., concurs in part and dissents in part and states as follows:

While I concur in the order remanding this case to the Wayne Circuit Court, I dissent from the majority's decision to limit the issues to those specified in the majority's order. I would instead include among the issues the first issue that the Court of Appeals directed the trial court to address on remand: "(1) whether plaintiff has waived its claim against defendants due to its failure to appeal and/or contest the January 6, 1999, order of distribution in *Rogers v City of Detroit, et al*, Wayne County Circuit Court, Docket No. 90-016936." *State Auto Mutual Ins Co v Fieger*, unpublished order of the Court of Appeals, entered November 8, 2005 (Docket No. 254461).

Further, I dissent from the participation of Chief Justice Taylor and Justices Corrigan, Young, and Markman in this case, where Mr. Fieger is a party. For my reasons in detail, see my dissent in *Grievance Administrator v Fieger*, 476 Mich 231, 328-347 (2006) (Weaver, J., dissenting).

CAVANAGH and KELLY, JJ., would grant leave to appeal.



d1003

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 6, 2006

A handwritten signature in cursive script that reads "Corbin R. Davis".

Clerk